

Arizona State Board of Nursing

Doug Ducey
Governor

Joey Ridenour
Executive Director



Special Board Meeting Minutes

The regular meeting of the Arizona State Board of Nursing convened at 4:02 p.m., Tuesday, December 20, 2016, in the Board of Nursing Board Room, Suite 200, 4747 N. 7th Street, Phoenix, Arizona, with Randy C. Quinn, CRNA, President, presiding.

BOARD MEMBERS PRESENT TELEPHONICALLY:

Theresa (Terri) Berrigan, LPN, C-AL, Secretary
Jana Machesky, LPN, Member
Dr. Melinda Preston, DNP, APRN, PMHNP-BC, Member
Brandon Dale, Member
Cecelia Andersen BSN, RN
Lori Gutierrez, BS, RN-C, Member
Kathryn L. Busby, JD, Member

BOARD MEMBERS PRESENT:

Randy C. Quinn, CRNA, President
Carolyn Jo McCormies, RN, MS, FNP-BC, Vice President
M. Shawn Harrell, RN, MS, Member

BOARD MEMBERS NOT PRESENT:

Dr. Melanie Logue, PhD, DNP, APRN, CFNP, FAANP, Member

LEGAL COUNSEL:

Elizabeth Campbell, Assistant Attorney General
Sunita Krishna, Assistant Attorney General

STAFF DIRECTORS PRESENT:

Joey Ridenour, RN, MN, FAAN, Executive Director
Janeen Dahn, PhD, FNP-C, Associate Director of Investigations
Judy Bontrager, RN, MN, Associate Director of Operations
Robert Ellis, BSIT, MBA, MPM, Associate Director of Operations

STAFF DIRECTORS PRESENT TELEPHONICALLY:

Valerie Smith, RN, MS, FRE, Associate Director

STAFF:

Katrina Alberty, Senior Investigator
Max Barker, Senior Investigator
Kathleen Harrington, RN, Nurse Practice Consultant
Sue Bushong, Senior Investigator
Pam Millben, Senior Investigator
Kevin, Rapkoch, BSN, Nurse Practice Consultant
Bonnie Richter, MSW, Senior Investigator

Naira Kutnerian, Legal Secretary II
Brent Sutter, Legal Assistant

I. Call to Order

The meeting was called to order at 4:02 p.m. Tuesday, December 20, 2016.

The following Board members were present telephonically: Gutierrez, Busby, Berrigan, Machesky, Preston, Andersen and Dale.

The following Board members were present: Quinn, McCormies and Harrell.

McCormies presided.

McCormies welcomed members of the audience, explained the procedure for addressing the Board, and stated the mission of the Board.

IV.A. Non-Compliance/Compliance with Board Orders

IV.A.1. Ann Virginia Hoy RN079222 (Sutter)

McCormies moved, Harrell seconded, and it was unanimously carried to table Agenda Item IV.A.1

III.A.3. Cora Marie Johnson RN124360 (Harrington)

Harrington addressed the Board with additional information. Attorney Kelly McDonald was present and addressed the Board. Preston moved, McCormies seconded, and it was unanimously carried to accept the signed Consent Agreement.

	VOTE	<u>Gutierrez</u> Member	<u>Logue</u> Member	<u>Dale</u> Member	<u>Machesky</u> Member	<u>Berrigan</u> Secretary	<u>Quinn</u> President	<u>McCormies</u> V. Pres	<u>Preston</u> Member	<u>Harrell</u> Member	<u>Andersen</u> Member	<u>Busby</u> Member
YES	9	X		X	X	X		X	X	X	X	X
NO	0											
ABSTAIN	0											
ABSENT	2		X				X					

Quinn arrived to the meeting at 4:24 p.m.

II.A. Administrative Law Judge (ALJ) Recommendations

II.A.1. Sue Ann McCoy RN035528 (Campbell)

The proceeding began at 4:20 p.m., with the following Board members present: Quinn, McCormies, Berrigan, Harrell, Preston, Gutierrez, Machesky, Busby, Andersen and Dale.

All Board members answered affirmatively that they had received and read the transcript of the hearing and the Administrative Law Judge's recommendation.

The State was represented by Elizabeth Campbell, Assistant Attorney General. Mary Williams, Assistant Attorney General, represented the Board.

McCoy was not present and was not represented by legal counsel.

Harrell moved, McCormies seconded, and it was unanimously carried, to reject the Administrative Law Judge's decision in its entirety and to accept the signed Consent Agreement.

	VOTE	<u>Gutierrez</u> Member	<u>Logue</u> Member	<u>Dale</u> Member	<u>Machesky</u> Member	<u>Berrigan</u> Secretary	<u>Quinn</u> President	<u>McCormies</u> V. Pres	<u>Preston</u> Member	<u>Harrell</u> Member	<u>Andersen</u> Member	<u>Busby</u> Member
YES	9	X		X	X	X		X	X	X	X	X
NO	0											
ABSTAIN	1						X					
ABSENT	1		X									

II.B. APRN/RN/LPN/CNA Investigative Report/Potential Summary Suspension Pursuant to A.R.S. § 41-1092.11(B) and/or Acceptance of a Consent Agreement and/or Adoption of Complaint & Notice of Hearing

II.B.1. Joshua John Baty LP051774 (Barker)

The proceeding began at 4:27 p.m., with the following Board members present: Quinn, McCormies, Berrigan, Harrell, Preston, Gutierrez, Machesky, Busby, and Dale.

Baty was not present and was not represented by legal counsel.

Based upon the information presented at this meeting, Board members discussed whether a showing of extraordinary circumstances or the possibility of irreparable harm has been made supporting the need for a Summary Suspension.

McCormies moved, Preston seconded, and it was unanimously carried, based upon the information presented at this meeting and the information contained in the investigative report, to accept and adopt the proposed preliminary Findings of Fact and Conclusions of Law of the Findings set forth in the draft Order attached to the investigative report.

	VOTE	<u>Gutierrez</u> Member	<u>Logue</u> Member	<u>Dale</u> Member	<u>Machesky</u> Member	<u>Berrigan</u> Secretary	<u>Quinn</u> President	<u>McCormies</u> V. Pres	<u>Preston</u> Member	<u>Harrell</u> Member	<u>Andersen</u> Member	<u>Busby</u> Member
YES	10	X		X	X	X	X	X	X	X	X	X
NO	0											
ABSTAIN	0											
ABSENT	1		X									

Board members discussed whether the foregoing conduct poses an immediate threat to the public health, safety, or welfare and requires emergency action pursuant to A.R.S. § 41-1092.11(B).

McCormies moved, Harrell seconded, and it was unanimously carried, based upon the information presented at this meeting, the findings of fact and statute/rule violations identified in the investigative report, and make a finding that public health safety and welfare imperatively requires emergency action and issue an Order summarily suspending the license of Joshua John Baty LP051774 pending further hearing. The hearing shall be promptly instituted and determined.

	VOTE	<u>Gutierrez</u> Member	<u>Logue</u> Member	<u>Dale</u> Member	<u>Machesky</u> Member	<u>Berrigan</u> Secretary	<u>Quinn</u> President	<u>McCormies</u> V. Pres	<u>Preston</u> Member	<u>Harrell</u> Member	<u>Andersen</u> Member	<u>Busby</u> Member
YES	9	X			X	X	X	X	X	X	X	X
NO	0											
ABSTAIN	1			X								
ABSENT	1		X									

It was therefore ordered that the license of Joshua John Baty LP051774 be suspended effective with the service of the written Order, and that Joshua John Baty LP051774 will immediately cease practice as a nurse. This suspension shall remain in effect pending a public hearing and final decision by the Arizona State Board of Nursing pursuant to A.R.S. § 32-1664.

**II.B. APRN/RN/LPN/CNA Investigative Report/Potential Summary Suspension
Pursuant to A.R.S. § 41-1092.11(B) and/or Acceptance of a Consent
Agreement and/or Adoption of Complaint & Notice of Hearing**

II.B.2. Brett Albert Whiteaker RN168273 (Barker)

The proceeding began at 4:31p.m., with the following Board members present: Quinn, McCormies, Berrigan, Harrell, Preston, Gutierrez, Machesky, Busby and Dale.

Barker addressed the Board with additional information. Whiteaker was not present and was not represented by legal counsel.

Based upon the information presented at this meeting, Board members discussed whether a showing of extraordinary circumstances or the possibility of irreparable harm has been made supporting the need for a Summary Suspension.

McCormies moved, Quinn seconded, and it was unanimously carried, based upon the information presented at this meeting and the information contained in the investigative report, to accept and adopt the proposed preliminary Findings of Fact and Conclusions of Law of the Findings set forth in the draft Order attached to the investigative report.

	VOTE	<u>Gutierrez</u> Member	<u>Logue</u> Member	<u>Dale</u> Member	<u>Machesky</u> Member	<u>Berrigan</u> Secretary	<u>Quinn</u> President	<u>McCormies</u> V. Pres	<u>Preston</u> Member	<u>Harrell</u> Member	<u>Andersen</u> Member	<u>Busby</u> Member
YES	9	X		X	X	X	X	X	X	X	X	
NO	0											
ABSTAIN	1											X
ABSENT	1		X									

Board members discussed whether the foregoing conduct poses an immediate threat to the public health, safety, or welfare and requires emergency action pursuant to A.R.S. § 41-1092.11(B).

Harrell moved, McCormies seconded, and it was unanimously carried, based upon the information presented at this meeting, the findings of fact and statute/rule violations identified in the investigative report, and make a finding that public health safety and welfare imperatively requires emergency action and issue an Order summarily suspending the license of Brett Albert Whiteaker RN168273 pending further hearing. The hearing shall be promptly instituted and determined.

	VOTE	<u>Gutierrez</u> Member	<u>Logue</u> Member	<u>Dale</u> Member	<u>Machesky</u> Member	<u>Berrigan</u> Secretary	<u>Quinn</u> President	<u>McCormies</u> V. Pres	<u>Preston</u> Member	<u>Harrell</u> Member	<u>Andersen</u> Member	<u>Busby</u> Member
YES	9	X		X	X	X	X	X	X	X	X	
NO	0											
ABSTAIN	1											X
ABSENT	1		X									

It was therefore ordered that the license of Brett Albert Whiteaker RN168273 be suspended effective with the service of the written Order, and that Brett Albert Whiteaker RN168273 will immediately cease practice as a nurse. This suspension shall remain in effect pending a public hearing and final decision by the Arizona State Board of Nursing pursuant to A.R.S. § 32-1664.

**II.B. APRN/RN/LPN/CNA Investigative Report/Potential Summary Suspension
Pursuant to A.R.S. § 41-1092.11(B) and/or Acceptance of a Consent
Agreement and/or Adoption of Complaint & Notice of Hearing**

II.B.3. Sultan Youssef Ayoub RN138359; AP3529 (Alberty)

The proceeding began at 4:35 p.m., with the following Board members present: Quinn, McCormies, Berrigan, Harrell, Preston, Gutierrez, Machesky, Busby, and Dale.

Alberty addressed the Board with additional information. Complainants were present. Ayoub was present and available for questions and was represented by legal counsels Kyle Shelton and Zaheer Shah.

Quinn moved, Harrell seconded, and it was unanimously carried to go into Executive Session pursuant to A.R.S. § 38-431-03(A)(2) and (3), on Agenda Item II.B.3 for the purpose of reviewing confidential documents, health records and to obtain legal advice. Executive Session convened at 4:45 p.m., and adjourned at 4:53 p.m.

Based upon the information presented at this meeting, Board members discussed whether a showing of extraordinary circumstances or the possibility of irreparable harm has been made supporting the need for a Summary Suspension.

McCormies moved, Harrell seconded, and it was unanimously carried, based upon the information presented at this meeting and the information contained in the investigative report, to accept and adopt the proposed preliminary Findings of Fact and Conclusions of Law of the Findings set forth in the draft Order attached to the investigative report.

	VOTE	<u>Gutierrez</u> Member	<u>Logue</u> Member	<u>Dale</u> Member	<u>Machesky</u> Member	<u>Berrigan</u> Secretary	<u>Quinn</u> President	<u>McCormies</u> V. Pres	<u>Preston</u> Member	<u>Harrell</u> Member	<u>Andersen</u> Member	<u>Busby</u> Member
YES	9	X		X	X	X	X	X	X	X	X	
NO	0											
ABSTAIN	0											
ABSENT	2		X									X

Board members discussed whether the foregoing conduct poses an immediate threat to the public health, safety, or welfare and requires emergency action pursuant to A.R.S. § 41-1092.11(B).

Attorney Kyle Shelton was present and addressed the Board. Attorney Zaheer Shah was present and available for questions. Preston moved, Berrigan seconded, and after discussion it was unanimously carried, based upon the information presented at this meeting, the findings of fact and statute/rule violations identified in the investigative report, and make a finding that public health safety and welfare imperatively requires emergency action and issue an Order summarily suspending the license of Sultan Youssef Ayoub RN138359; AP3529 pending further hearing. The hearing shall be promptly instituted and determined.

	VOTE	<u>Gutierrez</u> Member	<u>Logue</u> Member	<u>Dale</u> Member	<u>Machesky</u> Member	<u>Berrigan</u> Secretary	<u>Quinn</u> President	<u>McCormies</u> V. Pres	<u>Preston</u> Member	<u>Harrell</u> Member	<u>Andersen</u> Member	<u>Busby</u> Member
YES	9	X		X	X	X	X	X	X	X	X	
NO	0											
ABSTAIN	1											X
ABSENT	1		X									

It was therefore ordered that the license/certificate of Sultan Youssef Ayoub RN138359; AP3529 be suspended effective with the service of the written Order, and that Sultan Youssef Ayoub will immediately cease practice as a nurse. This suspension shall remain in effect pending a public hearing and final decision by the Arizona State Board of Nursing pursuant to A.R.S. § 32-1664.

II.D. Hearing Department Investigative Reports and/or Issue Notice of Charges and/or Issue Complaint and Notice of Hearing

II.D.1. Matilda A. Johnson CNA461686803 (Campbell)

Quinn moved, McCormies seconded, and it was unanimously carried to table Agenda Item II.D.1.

II.C. Request to Rescind Prior Board Decision to Consider Alternative Action

II.C.1. Kelly Jean Brigham RN Applicant (Campbell)

The State was represented by Elizabeth Campbell, Assistant Attorney General. Mary Williams, Assistant Attorney General, represented the Board.

Brigham was not present and was not represented by legal counsel.

Quinn moved, McCormies seconded, and it was unanimously carried, based upon information in the investigative report, issue a Letter of Concern as proposed by Board staff and as contained in the investigative report and grant licensure.

IV.A. Non-Compliance/Compliance with Board Orders

IV.A.1. Ann Virginia Hoy RN079222 (Sutter)

Quinn moved, McCormies seconded, and it was unanimously carried to reopen Agenda Item IV.A.1. Sutter was present and addressed the Board with additional information. Attorney David Derickson was present and addressed the Board. Hoy was present and available for questions. Quinn moved, Harrell seconded, and after discussions it was unanimously carried to continue to the January Board meeting.

	VOTE	<u>Gutierrez</u> Member	<u>Logue</u> Member	<u>Dale</u> Member	<u>Machesky</u> Member	<u>Berrigan</u> Secretary	<u>Quinn</u> President	<u>McCormies</u> V. Pres	<u>Preston</u> Member	<u>Harrell</u> Member	<u>Andersen</u> Member	<u>Busby</u> Member
YES	10	X		X	X	X	X	X	X	X	X	X
NO	0											
ABSTAIN	0											
ABSENT	1		X									

**V.A.1. Board Reports for Discussion, Information, Staff Direction and/or Decision
Executive Director Report – Discussion & Decision Appointment Board Member
Attendance at 2017 NCSBN Midyear Meeting – March 14 & 15, 2017, Salt Lake
City Utah – Ridenour**

Ridenour addressed the Board. Quinn moved, McCormies seconded, and it was unanimously carried to appoint Anderson as the Board Member representative for the NCSBN Midyear meeting.

**III.A.2. Jennifer Anne Williams RN Endorsement (Richter)
(aka: Jennifer Anne Tossetti)**

McCormies moved, Harrell seconded, and it was unanimously carried, based upon the information in the investigative report, issue a Letter of Concern as proposed by Board staff and as contained in the investigative report.

	VOTE	<u>Gutierrez</u> Member	<u>Logue</u> Member	<u>Dale</u> Member	<u>Machesky</u> Member	<u>Berrigan</u> Secretary	<u>Quinn</u> President	<u>McCormies</u> V. Pres	<u>Preston</u> Member	<u>Harrell</u> Member	<u>Andersen</u> Member	<u>Busby</u> Member
YES	10	X		X	X	X	X	X	X	X	X	X
NO	0											
ABSTAIN	0											
ABSENT	1		X									

**II.D. Hearing Department Investigative Reports and/or Issue Notice of Charges
and/or Issue Complaint and Notice of Hearing**

II.D.1. Matilda A. Johnson CNA461686803 (Campbell)

McCormies moved, Quinn seconded, and it was unanimously carried to reopen Agenda Item II.D.1. Campbell addressed the Board. Johnson was present telephonically and addressed the

Board. McCormies moved, Quinn seconded, and it was unanimously carried for the foregoing reasons, to deny Respondent's Request for Review or Rehearing.

	VOTE	Gutierrez Member	Logue Member	Dale Member	Machesky Member	Berrigan Secretary	Quinn President	McCormies V. Pres	Preston Member	Harrell Member	Andersen Member	Busby Member
YES	10	X		X	X	X	X	X	X	X	X	X
NO	0											
ABSTAIN	0											
ABSENT	1		X									

III. RN/LPN/CNA Investigative Reports

III.A.1. Aaron Michael Merry RN163804 (Barker)

Attorney Lance Wood was present telephonically and addressed the Board. Quinn moved, Preston seconded, and it was unanimously carried, based upon the information in the investigative report, issue a Notice of Charges.

	VOTE	Gutierrez Member	Logue Member	Dale Member	Machesky Member	Berrigan Secretary	Quinn President	McCormies V. Pres	Preston Member	Harrell Member	Andersen Member	Busby Member
YES	10	X		X	X	X	X	X	X	X	X	X
NO	0											
ABSTAIN	0											
ABSENT	1		X									

III.A.4. Pamela Dee Zipf RN126574 (Harrington)

An attempt was made to contact attorney Teresa Sanzio telephonically. Quinn moved, McCormies seconded, and it was unanimously carried to continue to the January Board meeting.

III.A.5. Crystal Lee Dillingham LP Exam (Bushong) (Maynard, Crystal Lee; Heuer, Crystal Lee; Horne, Crystal Lee)

Dillingham was present telephonically and available for questions. Quinn moved, Harrell seconded, and after discussion it was unanimously carried to allow Applicant to withdraw her LPN application with the understanding that a new licensure application will initiate a Board investigation.

	VOTE	Gutierrez Member	Logue Member	Dale Member	Machesky Member	Berrigan Secretary	Quinn President	McCormies V. Pres	Preston Member	Harrell Member	Andersen Member	Busby Member
YES	10	X		X	X	X	X	X	X	X	X	X
NO	0											
ABSTAIN	0											
ABSENT	1		X									

VI. Call to the Public

A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. The Board may ask staff to review a matter or may ask that a matter be put on a future agenda. Members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action. A.R.S. § 38-431.01(G).

No members of the public requested to speak

VII. Adjournment

Preston moved, McCormies seconded, and it was unanimously carried to adjourn the meeting.

The meeting adjourned at 6:14 p.m. Tuesday, December 20, 2016.

Randy C. Quinn, CRNA, President